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No. 94-608

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

CITY OF YONKERS, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion in failing to adopt petitioner's proposed remedial plan.

2. Whether the district court abused its discretion in appointing a special master to oversee the implementation of the remedy.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A7) is reported at 29 F.3d 40. The opinions of the district court (Pet. App. A51-A65, A66-A95, A97-A108) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 1994. The petition for a writ of certiorari was filed on October 3, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101(c).

STATEMENT

1. Following a lengthy trial in 1983 and 1984, the district court found that petitioner had unconstitutionally segregated its housing by relegating virtually all subsidized housing to the southwest part of the City. Pet. App. A3. To remedy that violation, the court ordered petitioner to develop a plan for the immediate placement of 200 units of public housing in East Yonkers. Pet. 3. The remedial order also required petitioner to establish a Fair Housing Office to help administer a fair housing policy. Pet. App. A3. Finally, the court ordered petitioner to adopt a long-term plan for the creation of additional subsidized housing in the east and northwest part of the City. *Ibid.* The present petition relates to that long-term plan.

In January, 1988, the parties negotiated a consent decree in which petitioner agreed to create 800 units of subsidized housing by 1992. Pet. App. A3. Almost immediately, petitioner sought to undo the agreement and refused to implement it. In June, 1988, the district court required petitioner to take specific actions to carry out the long-term plan. *Ibid.* The court also expanded the role of the Fair Housing Office and renamed it the Fair Housing Implementation Office. *Ibid.*

Over the next three years, petitioner failed to implement the long-term plan. In June, 1991, plaintiff-intervenor, NAACP, moved for an order requiring petitioner to implement the long-term plan. Pet. App. A3. In response, petitioner moved to vacate or modify the consent decree and the long-term plan. *Ibid.*

At the district court's invitation, petitioner proposed an alternative to the long-term plan in 1992. Pet. App. A4. Petitioner's plan set a goal of 709 units of subsidized

housing, with 450 units coming from existing housing and the rest from new construction or renovation. *Ibid.* The court gave petitioner eight months to work with the Fair Housing Implementation Office to demonstrate that its plan would be effective. *Ibid.*

In June and July of 1993, the district court held a hearing on petitioner's plan. The court found that experience demonstrated that petitioner's use of existing housing "could not realistically achieve even a small percentage of the 450 units it projects." Pet. App. A4. The court also found that disharmony between petitioner and the Fair Housing Implementation Office and political pressures exerted on petitioner had substantially impeded petitioner's progress during the trial period. *Ibid.* The court further found that petitioner's plans for new construction were also inadequate. *Ibid.* The court specifically criticized the plan because it made inefficient use of the proposed sites and because it failed to include any alternatives to owner-occupied town houses, such as rental units. *Ibid.*

The district court then adopted a supplemental remedial plan that resembled a plan submitted by the Fair Housing Implementation Office. Pet. App. A4. The court's plan sets a goal of 250 units from existing housing, rather than the 450 units proposed by petitioner. *Ibid.* The court also appointed a special master to supervise the implementation of the remedy. *Ibid.*

2. The court of appeals affirmed. Pet. App. A1-A7. The court held that the district court did not abuse its discretion in rejecting petitioner's remedial plan, "particularly in view of the eight years that have elapsed since the [original remedial order] was entered." *Id.* at A4. The court rejected petitioner's claim that the district court's failure to adopt petitioner's plan violated

principles of federalism. The court explained that "a proper respect for the principles of federalism does not require a court to adopt wholesale the local government's choice of remedies." *Id.* at A5. A district court also has an obligation to ensure that a plan proposed by local authorities "promises realistically to work, and promises realistically to work *now*." *Ibid.* (quoting *Green* v. *County Sch. Bd.*, 391 U.S. 430, 439 (1968).

The court of appeals noted that the district court had "invited the City's alternative proposal, gave the City eight months to demonstrate its feasibility, and held a ten-day hearing on its merits." Pet. App. A6. Following that hearing, the district court "retained those aspects of the City's plan it found realistic and effective, and jettisoned those it found unrealistic and unfeasible." *Ibid.* The court concluded that "[t]his was a proper exercise of [the district court's] authority." *Ibid.*

The court of appeals also held that the district court did not abuse its discretion in appointing a special master to implement the remedy. The court noted that "[t]he remedial phase of this litigation has now dragged on for eight years, producing few tangible results." Pet. App. A7. It further observed that during the eight-month period in which petitioner was attempting to demonstrate the effectiveness of its plan, petitioner had failed to work effectively with the Fair Housing Implementation Office and had allowed political pressures to interfere with its ability to implement an effective remedy. *Ibid.* The court therefore saw "no basis to disturb [the district court's] conclusion that effective desegregation requires a more centralized control in a single individual immune to the political pressures which have compromised the City's most recent efforts at compliance." *Ibid.* The court added that petitioner would continue to have an important role in imple-

menting the remedy because the district court's order required the special master to work with petitioner and because petitioner could appeal decisions made by the special master to the district court. *Ibid.*

ARGUMENT

1. Petitioner contends (Pet. 14-24) that principles of federalism required the district court to defer to petitioner's remedial plan. That contention is without merit.

In exercising its remedial authority, a district court is required to take into account the interests of state and local authorities in managing their own affairs. *Milliken* v. *Bradley*, 433 U.S. 267, 280-281 (1977). That principle applies not only when a federal court adopts its initial remedy but also when the court decides to modify its remedy in light of changed circumstances. *Rufo* v. *Inmates of Suffolk County Jail*, 112 S. Ct. 748, 764 (1992). As the court of appeals held, however, "a proper respect for the principles of federalism does not require a court to adopt wholesale the local government's choice of remedies." Pet. App. A5. A federal court has a duty to provide an effective remedy to those whose rights have been violated. *Davis* v. *Board of Sch. Comm'rs*, 402 U.S. 33, 37 (1971). Accordingly, a court may adopt a remedial plan proposed by a local government only when the plan "promises realistically to work, and promises realistically to work *now*." *Green*, 391 U.S. at 439. When a local government fails to submit such a plan, a federal court is obligated to adopt its own remedial plan. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

The district court followed those remedial principles. The district court first issued its remedial order in 1986. Over the next five years, petitioner resisted implemen-

tation of the remedy. Exercising unusual patience, the court then urged petitioner to propose an alternative remedy. Petitioner finally proposed a remedy in 1992 that relied heavily on the use of existing units. When questions were raised about the effectiveness of such a remedy, the district court gave petitioner a trial period of eight months to show that such a remedy could be effective. At the end of that period, the district court held a ten-day hearing. Based on the evidence introduced at that hearing, the court found that petitioner's remedy would not be effective. The court specifically found that petitioner "could not realistically achieve even a small percentage of the 450 units it projects." Pet. App. A4. The court also found that petitioner's plan for new construction was demonstrably inadequate. *Ibid.*

Thus, the district court gave petitioner every opportunity to devise and implement its own remedy. Experience showed, however, that petitioner's remedy did not realistically promise to work. In those circumstances, the district court was fully justified in rejecting petitioner's proposed remedy and adopting instead a remedy that promised to be more effective. Petitioner's contrary view ignores the district court's findings and the history of this case.

2. Petitioner contends (Pet. 24-30) that the district court abused its discretion by appointing a special master to supervise the implementation of the remedy. That contention is also without merit. Federal courts have inherent, equitable power to appoint a special master to supervise the implementation of their decrees, see *Ex parte Peterson*, 253 U.S. 300, 312-314 (1920), and may properly do so where local authorities have been unable or unwilling to implement a court-ordered remedy, see, *e.g.*, *Morgan* v. *McDonough*, 540 F.2d 527, 533-534 (1st Cir. 1976) (court affirms district court's

appointment of receiver to implement desegregation order), cert. denied, 429 U.S. 1042 (1977). That was the situation here.

Petitioner does not deny that for years it actively resisted implementation of any remedy. Rather, it asserts (Pet. 28) that it has become more cooperative recently. In deciding what measures were needed to ensure that the judicial remedy would be implemented, however, the district court could properly consider petitioner's history of noncompliance. The court could also properly consider the fact that, during the eight-month demonstration period, petitioner continued to allow political pressure from outside interest groups to interfere with the implementation of an effective remedy. Pet. App. A4. Finally, the district court could also properly take into account the fact that "[t]he remedial phase of this litigation has now dragged on for eight years, producing few tangible results." *Id.* at A7. In light of those extraordinary circumstances, the district court acted well within its discretion in appointing a special master to supervise the implementation of the remedy.

Petitioner contends (Pet. 29-30) that the district court's order intrudes too deeply into petitioner's legitimate prerogatives and that the special master should have been given the more limited role of monitoring compliance and facilitating the interaction of the parties. Given the circumstances in this case, however, the district court reasonably determined that "effective desegregation requires a more centralized control in a single individual immune to the political pressures which have compromised the City's most recent efforts at compliance." Pet. App. A7. Moreover, as the court of appeals noted (*ibid.*), petitioner will continue to play an important role in the implementation

of the remedy. Under the district court's order, the special master is required to work with petitioner. And while the special master has the power to resolve disputes between them, petitioner has the right to appeal any adverse decision to the district court.

Petitioner contends (Pet. 28-29) that the decision below conflicts with the decisions in *United States* v. *City of Parma*, 661 F.2d 562 (6th Cir. 1981), cert. denied, 456 U.S. 926 (1982), and *Newman* v. *Alabama*, 559 F.2d 283 (5th Cir. 1977), cert. denied, 438 U.S. 915, cert. granted in part and rev'd in part on other grounds *sub nom. Alabama* v. *Pugh*, 438 U.S. 781 (1978) (per curiam). There is, however, no such conflict. In *City of Parma*, the Sixth Circuit held that it was an abuse of discretion to appoint a special master to administer a remedy when less intrusive means would be equally effective. 661 F.2d at 578-579. Similarly, in *Newman*, the Fifth Circuit held that it was an abuse of discretion to appoint a 39-member committee to monitor the remedy when a single monitor would do. 559 F.2d at 289-290. By contrast, in this case, the district court determined, based on the evidence before it and the history of this litigation, that effective desegregation required the appointment of a special master with the power to supervise the implementation of the remedy. Less intrusive measures, the court concluded, would not suffice. *City of Parma* and *Newman* are therefore inapposite.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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